

CITY
OF

FAIRVIEW

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December 5, 1997

DEC 10 1997

Mr. William Kennard
Chairman Designate
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20554

FCC MAIL ROOM

192
Ex Parte Letter Re: Cases WT 97-192, MM Docket 97-182 and DA 96-2140

Dear Chairman Kennard:

Please terminate all action in the preceding cases, which would preempt local government zoning authority for cellular and broadcast towers.

Congress and the courts have long recognized that zoning is a matter of local concern. The FCC not only has no zoning expertise but also is inaccessible to most citizens.

For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the Telecommunications Act of 1996. Now the FCC is attempting to regain this jurisdiction by issuing rules, which improperly infringe on our local zoning authority.

Any effort by the FCC to assume jurisdiction over any local zoning matter where RF radiation is mentioned is unacceptable. Ignored is the fact that we cannot control the statements citizens make during our City Council meetings, particularly those regarding radiation.

By using such statements as a means to seize local zoning authority and reverse local zoning decisions violates the basic principles of federalism, freedom of speech, and rights of our citizens to petition their government. This is particularly true when local decisions reflecting the impact of towers on property values, aesthetics, health, safety and welfare of citizens and public rights of way are overridden.

For many of the same reasons, the FCC's proposal to ban moratoria on cellular towers is just as objectionable. It also fails to recognize that for some cities, moratoria are a well-recognized zoning tool, particularly while they revise zoning ordinances. More importantly, Congress took away the FCC's authority over cellular tower zoning including moratoria.

Similarly, please terminate the FCC's proposed rule preempting local zoning of broadcast towers. Broadcast towers may rise as tall as 2000 feet, making them some of the tallest structures known to man. Therefore, it is unacceptable that you would propose that municipalities not be able to consider the impact such towers would have on property values, aesthetics, our public rights of way and above all, the health safety and welfare of our citizens.



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Setting an artificial limit of 21 to 45 days for cities such as ours to act on any permit (environmental, building permit, zoning or other) serves no useful purpose. If we fail to act within this time frame, any permit request would automatically be granted regardless of the impact of the tower on property values, aesthetics and public rights of way. The FCC could override even safety requirements and local laws. The FCC and not the local courts would review all appeals of zoning and permit denials.

Please consider how the FCC would react if it were told that any broadcast license application would be automatically deemed granted unless the FCC acted on it within 21-45 days; that this rule applied whether or not the application was complete; whether or not the applicant was foreign or domestically owned or otherwise qualified; or even whether the frequencies were available. This rule would apply without regard to whether the tower was at the end of an airport runway, in a wetland or historic district.

For these reasons the proposed actions violate the Communications Act and the Constitution. Please terminate all these proceedings without taking the actions proposed herein.

Sincerely,
CITY OF FAIRVIEW



Roger Vonderharr
Mayor

RV:cch

cc: ✓ Mr. William F. Caton
Acting Secretary
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[see attached list]

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